

Montana Water Court
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FILED
05/16/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0105-R-2023
Nordlund, Julia
5.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Raelynn Durnam; Edeane Lawson; Jaclynn J.
Neumann

CASE 41H-0105-R-2023
41H 33154-00

OBJECTOR: USA (Dept of Agriculture Forest Service)

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. On May 3, 2023, Claimants Raelynn Durnam, Edeane Lawson, and Jaclynn J. Neumann and Objector USA (Dept. of Agriculture Forest Service) submitted a Stipulation wherein the parties agreed to an information remark on claim 41H 33154-00 in exchange for resolution of the objection.

2. The Stipulation is viewable on the Water Court's FullCourt Enterprises case management system, Doc #4.

3. The following information remark shall be placed on the claim:

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED
ENTIRELY ON PRIVATE LAND.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkharmsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The parties agree that this change resolves all objections and issue remarks.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Raelynn Durnam
663 Emily Dr
Bozeman, MT 59718

Edeane Lawson
3470 Frank Derek Ave
Las Vegas, NV 89139

Jaclynn J. Neumann
172 Scenic Dr
Butte, MT 59701

Service Via Electronic Mail:

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 33154-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JACLYNN J NEUMANN

172 SCENIC DR
BUTTE, MT 59701

RAELYNN DURNAM
663 EMILY DR
BOZEMAN, MT 59718

EDEANE LAWSON
3470 FRANK DEREK AVE
LAS VEGAS, NV 89139

Priority Date: JANUARY 8, 1926

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF MOOSE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	6	6S	5E	GALLATIN

Period of Diversion: JUNE 1 TO NOVEMBER 15

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SWSENW	6	6S	5E	GALLATIN
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Period of Diversion: JUNE 1 TO NOVEMBER 15

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JUNE 1 TO NOVEMBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNESW	6	6S	5E	GALLATIN
2			SWSENW	6	6S	5E	GALLATIN

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND.